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AMENDED IN SENATE JUNE 8, 2016

AMENDED IN ASSEMBLY JUNE 1, 2015

AMENDED IN ASSEMBLY APRIL 13, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

## ASSEMBLY BILL

**No. 626**

**Introduced by Assembly Members Chiu and Low**

**(Coauthor: Assembly Member Frazier)**

(Coauthors: Senators Anderson, Cannella, ~~and Gaines~~ *Gaines*, and  
*Hertzberg*)

February 24, 2015

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An act to add and repeal Section 9204 of the Public Contract Code,  
relating to public contracts.

### LEGISLATIVE COUNSEL'S DIGEST

AB 626, as amended, Chiu. Public contracts: claim resolution.

Existing law prescribes various requirements regarding the formation, content, and enforcement of state and local public contracts. Existing law applicable to state public contracts generally requires that the resolution of claims related to those contracts be subject to arbitration. Existing law applicable to local agency contracts prescribes a process for the resolution of claims related to those contracts of \$375,000 or less.

This bill would establish, for contracts entered into on or after January 1, 2017, a claim resolution process applicable to any claim by a

contractor in connection with a public works project. The bill would define a claim as a separate demand by the contractor for one or more of the following: a time extension for relief from damages or penalties for delay, payment of money or damages arising from work done pursuant to the contract for a public work, or payment of an amount disputed by the public entity, as specified.

This bill would require a public entity, defined to exclude certain state entities, upon receipt of a claim sent by registered or certified mail, to review it and, within 45 days, provide a written statement identifying the disputed and undisputed portions of the claim. The bill would authorize the 45-day period to be extended by mutual agreement. The bill would require any payment due on an undisputed portion of the claim to be processed within 60 days, as specified. The bill would require that the claim be deemed rejected in its entirety if the public entity fails to issue the written statement.

This bill would authorize, if the claimant disputes the public entity's written response or if the public entity fails to respond to a claim within the time prescribed, the claimant to demand to meet and confer for settlement of the issues in dispute. The bill would require any disputed portion of the claim that remains in dispute after the meet and confer conference to be subject to nonbinding mediation, as specified. The bill would provide that unpaid claim amounts accrue interest at 7% per annum. The bill would prescribe a procedure by which a subcontractor or lower tier contractor may make a claim through the contractor.

This bill would require the text of these provisions, or a summary, to be set forth in the plans or specifications for any public work which may give rise to a claim. The bill would specify that a waiver of these rights is void and contrary to public policy, except as specified. The bill would also specify that it does not impose liability on a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

By increasing the duties of local agencies and officials, this bill would impose a state-mandated local program.

This bill would, on January 1, 2020, repeal the provision establishing the claim resolution process.

This bill would specify that these provisions constitute a matter of statewide concern.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 9204 is added to the Public Contract  
2 Code, to read:  
3 9204. (a) The Legislature finds and declares that it is in the  
4 best interests of the state and its citizens to ensure that all  
5 construction business performed on a public works project in the  
6 state that is complete and not in dispute is paid in full and in a  
7 timely manner.  
8 (b) Notwithstanding any other law, including, but not limited  
9 to, Article 7.1 (commencing with Section 10240) of Chapter 1 of  
10 Part 2, Chapter 10 (commencing with Section 19100) of Part 2,  
11 and Article 1.5 (commencing with Section 20104) of Chapter 1 of  
12 Part 3, this section shall apply to any claim by a contractor in  
13 connection with a public works project.  
14 (c) For purposes of this section:  
15 (1) "Claim" means a separate demand by a contractor sent by  
16 registered mail or certified mail with return receipt requested, for  
17 one or more of the following:  
18 (A) A time extension, including, without limitation, for relief  
19 from damages or penalties for delay assessed by a public entity  
20 under a contract for a public works project.  
21 (B) Payment by the public entity of money or damages arising  
22 from work done by, or on behalf of, the contractor pursuant to the  
23 contract for a public works project and payment for which is not  
24 otherwise expressly provided or to which the claimant is not  
25 otherwise entitled.  
26 (C) Payment of an amount that is disputed by the public entity.  
27 (2) "Contractor" means any type of contractor within the  
28 meaning of Chapter 9 (commencing with Section 7000) of Division  
29 3 of the Business and Professions Code who has entered into a  
30 direct contract with a public entity for a public works project.

(3) (A) “Public entity” means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) “Public entity” shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with Section 7000) of Title 7 of Part 3 of the Penal Code.

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) “Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d) (1) (A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

1 (B) The claimant shall furnish reasonable documentation to  
2 support the claim.

3 (C) If the public entity needs approval from its governing body  
4 to provide the claimant a written statement identifying the disputed  
5 portion and the undisputed portion of the claim, and the governing  
6 body does not meet within the 45 days or within the mutually  
7 agreed to extension of time following receipt of a claim sent by  
8 registered mail or certified mail, return receipt requested, the public  
9 entity shall have up to three days following the next duly publicly  
10 noticed meeting of the governing body after the 45-day period, or  
11 extension, expires to provide the claimant a written statement  
12 identifying the disputed portion and the undisputed portion.

13 (D) Any payment due on an undisputed portion of the claim  
14 shall be processed and made within 60 days after the public entity  
15 issues its written statement. If the public entity fails to issue a  
16 written statement, paragraph (3) shall apply.

17 (2) (A) If the claimant disputes the public entity's written  
18 response, or if the public entity fails to respond to a claim issued  
19 pursuant to this section within the time prescribed, the claimant  
20 may demand in writing an informal conference to meet and confer  
21 for settlement of the issues in dispute. Upon receipt of a demand  
22 in writing sent by registered mail or certified mail, return receipt  
23 requested, the public entity shall schedule a meet and confer  
24 conference within 30 days for settlement of the dispute.

25 (B) Within 10 business days following the conclusion of the  
26 meet and confer conference, if the claim or any portion of the claim  
27 remains in dispute, the public entity shall provide the claimant a  
28 written statement identifying the portion of the claim that remains  
29 in dispute and the portion that is undisputed. Any payment due on  
30 an undisputed portion of the claim shall be processed and made  
31 within 60 days after the public entity issues its written statement.  
32 Any disputed portion of the claim, as identified by the contractor  
33 in writing, shall be submitted to nonbinding mediation, with the  
34 public entity and the claimant sharing the associated costs equally.  
35 The public entity and claimant shall mutually agree to a mediator  
36 within 10 business days after the disputed portion of the claim has  
37 been identified in writing. If the parties cannot agree upon a  
38 mediator, each party shall select a mediator and those mediators  
39 shall select a qualified neutral third party to mediate with regard  
40 to the disputed portion of the claim. Each party shall bear the fees

1 and costs charged by its respective mediator in connection with  
2 the selection of the neutral mediator. If mediation is unsuccessful,  
3 the parts of the claim remaining in dispute shall be subject to  
4 applicable procedures outside this section.

5 (C) For purposes of this section, mediation includes any  
6 nonbinding process, including, but not limited to, neutral evaluation  
7 or a dispute review board, in which an independent third party or  
8 board assists the parties in dispute resolution through negotiation  
9 or by issuance of an evaluation. Any mediation utilized shall  
10 conform to the timeframes in this section.

11 (D) Unless otherwise agreed to by the public entity and the  
12 contractor in writing, the mediation conducted pursuant to this  
13 section shall excuse any further obligation under Section 20104.4  
14 to mediate after litigation has been commenced.

15 (E) This section does not preclude a public entity from requiring  
16 arbitration of disputes under private arbitration or the Public Works  
17 Contract Arbitration Program, if mediation under this section does  
18 not resolve the parties' dispute.

19 (3) Failure by the public entity to respond to a claim from a  
20 contractor within the time periods described in this subdivision or  
21 to otherwise meet the time requirements of this section shall result  
22 in the claim being deemed rejected in its entirety. A claim that is  
23 denied by reason of the public entity's failure to have responded  
24 to a claim, or its failure to otherwise meet the time requirements  
25 of this section, shall not constitute an adverse finding with regard  
26 to the merits of the claim or the responsibility or qualifications of  
27 the claimant.

28 (4) Amounts not paid in a timely manner as required by this  
29 section shall bear interest at 7 percent per annum.

30 (5) If a subcontractor or a lower tier subcontractor lacks legal  
31 standing to assert a claim against a public entity because privity  
32 of contract does not exist, the contractor may present to the public  
33 entity a claim on behalf of a subcontractor or lower tier  
34 subcontractor. A subcontractor may request in writing, either on  
35 his or her own behalf or on behalf of a lower tier subcontractor,  
36 that the contractor present a claim for work which was performed  
37 by the subcontractor or by a lower tier subcontractor on behalf of  
38 the subcontractor. The subcontractor requesting that the claim be  
39 presented to the public entity shall furnish reasonable  
40 documentation to support the claim. Within 45 days of receipt of

1 this written request, the contractor shall notify the subcontractor  
2 in writing as to whether the contractor presented the claim to the  
3 public entity and, if the original contractor did not present the  
4 claim, provide the subcontractor with a statement of the reasons  
5 for not having done so.

6 (e) The text of this section or a summary of it shall be set forth  
7 in the plans or specifications for any public works project that may  
8 give rise to a claim under this section.

9 (f) A waiver of the rights granted by this section is void and  
10 contrary to public policy, provided, however, that (1) upon receipt  
11 of a claim, the parties may mutually agree to waive, in writing,  
12 mediation and proceed directly to the commencement of a civil  
13 action or binding arbitration, as applicable; and (2) a public entity  
14 ~~in its public works contracts may include dispute resolution~~  
15 ~~provisions that comply with this section, including the timeframes~~  
16 ~~set forth herein, and that prescribe additional reasonable and~~  
17 ~~equitable terms regarding actions or procedures to be taken by the~~  
18 ~~parties.~~ *may prescribe reasonable change order, claim, and dispute*  
19 *resolution procedures and requirements in addition to the*  
20 *provisions of this section, so long as the contractual provisions*  
21 *do not conflict with or otherwise impair the timeframes and*  
22 *procedures set forth in this section.*

23 (g) This section applies to contracts entered into on or after  
24 January 1, 2017.

25 (h) Nothing in this section shall impose liability upon a public  
26 entity that makes loans or grants available through a competitive  
27 application process, for the failure of an awardee to meet its  
28 contractual obligations.

29 (i) This section shall remain in effect only until January 1, 2020,  
30 and as of that date is repealed, unless a later enacted statute, that  
31 is enacted before January 1, 2020, deletes or extends that date.

32 SEC. 2. The Legislature finds and declares that it is of statewide  
33 concern to require a charter city, charter county, or charter city  
34 and county to follow a prescribed claims resolution process to  
35 ensure there are uniform and equitable procurement practices.

36 SEC. 3. If the Commission on State Mandates determines that  
37 this act contains costs mandated by the state, reimbursement to  
38 local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

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